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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

February 24, 2004
AO-04-02

Kelly Ross
Westford Finance Committee
7 Carriage Way
Westford, MA 01886

Re: Distribution of Town Meeting Warrant

Dear Mr. Ross:

This letter is in response to your request for an opinion regarding the use of public resources by the Westford Finance Committee to distribute town meeting material.

You have indicated that there may be a Proposition 2 ½ override on the ballot at the Westford Town Election on May 4, 2004. The annual Town Meeting is scheduled four days later, on May 8. These dates are fixed by town bylaws.

Under these circumstances, you have asked whether it would be permissible for the Finance Committee to distribute the "Finance Committee Report and Recommendations for the Annual Town Meeting Warrant" to voters prior to the election. The report, to be included in the Town Meeting Warrant, would present two sets of budget recommendations for possible Town Meeting action depending on the outcome of the override: one recommended if the override had passed at the election, the other recommended if the override did not pass.

QUESTION

May a finance committee use public resources to distribute the Town Meeting material, which references a pending override, to voters prior to the Town Meeting and relevant election where the election is scheduled first?

ANSWER

Yes. The campaign finance law does not prohibit the use of public resources to distribute information that is *primarily related to town meeting*, as long as such material does not appear to reference the election or take a position on the election.

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question. The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value in support of or opposition to a ballot question. This prohibition includes expenditures made to distribute information regarding a ballot question, even if it is intended to be objective and factual, unless expressly authorized by state law.¹

On the other hand, the campaign finance law does not regulate expenditures made "primarily to affect the deliberations on a warrant article in a town meeting." See IB-91-01. Generally speaking, where an override election precedes the relevant Town Meeting, OCPF advises that public resources not be used to distribute information to voters until after the election. This eliminates any inference that taxpayer funds are being inappropriately used to influence or affect the outcome of the ballot election.

Waiting until after the election does not, however, appear to be an option for the Westford Finance Committee due to the requirement that the warrant be mailed to voters sufficiently in advance of Town Meeting. The distribution of the Committee's report under these circumstances would appear to be consistent with Anderson as long as the material does not otherwise reference the pending election and is limited to the content of the official warrant. There should be no other substantive information regarding the override included with the report. Put another way, there should be no doubt that the report is primarily related to Town Meeting, not the May 4th Town Election. In order to ensure compliance with the campaign finance law, we would be happy to review the Finance Committee's report prior to distribution.

This opinion is provided on the basis of representations in your letter and our telephone conversations, and is solely within the context of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp

¹ The Secretary of the Commonwealth's Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing "informational" material regarding a ballot question without legislative authority. Only Newton, Cambridge, Sudbury, Dedham and Burlington have the authority to distribute such material.